UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF VIRGINIA
NORFOLK DIVISION

JTH TAX, INC. d/b/a LIBERTY TAX SERVICE,

Plaintiff,

Civil No. 2:07cv170

v.

KENYA WHITAKER AND EASY SOFTWARE SOLUTIONS, LLC.,

Defendants.

Declaration of June Montalbano

Pursuant to 28 U.S.C. § 1746, I, June Montalbano, declare under penalty of perjury that the following statements are true and correct:

1. I am over the age of eighteen (18) years and am fully competent to testify to the matter stated in this declaration. This declaration is based upon my personal knowledge, Liberty's corporate and business records, and information available form Liberty's employees and agents.

2. I am employed by JTH Tax, Inc. d/b/a Liberty Tax Service ("Liberty") as a Corporate Paralegal at the Liberty Corporate Headquarters in Virginia Beach and have held this position from April 2001, leaving briefly July 2002 through February 2004.

3. I am a custodian of franchise files for Liberty, including the franchise file containing Kenya Whitaker's and Easy Software Solutions, LLC. (collectively "Whitaker") franchise agreement with Liberty.

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4. The manner in which Liberty and our franchisees enter into Franchise Agreements is as follows:

5. Liberty gives to the franchise prospect a Uniform Franchise Offering Circular ("UFOC") at the earliest of the first personal meeting to discuss the franchise opportunity or at least ten business days before the prospect enters into a binding agreement with us or makes a payment to us. In Whitaker's case, she first received a 6-02 UFOC, the body of which, along with Exhibit B only, is attached here as Exhibit 1.

6. Liberty sends out a completed franchise agreement on the territory to be purchased and directs the franchisee to hold the Agreement for five business days.

7. The prospective franchisee signs and returns the Agreement.

8. Once Liberty receives the prospective franchisee's signed Agreement, the paralegals, including myself, perform a Compliance Check whereby we ensure that the proposed franchise purchase complies with Federal Trade Commission law, namely, that the prospective franchisee has had Liberty's UFOC for 10 business days and the franchise agreement for five business days, before tendering any money to us or before the parties enter into the franchise agreement. We do this by checking the dates on Receipts that the Franchisee returns to us with the documents. In Whitaker's case, her Receipts, titled "Exhibit K" as to receipt of the UFOC, and "Exhibit J" as to receipt of the franchise agreement, are attached here as Exhibits 2 and 3 respectively.

9. Once the Compliance Check is complete, a Liberty officer signs the franchise agreements at Liberty's corporate headquarters, in Virginia Beach, Virginia. A signature on behalf of Liberty is the final signature necessary to effectuating a franchisee's purchase of a Liberty franchise territory.

10. Attached hereto as Exhibit 4 is the Franchise Agreement entered into between Whitaker and Liberty.

11. The Franchise Agreement signed by Whitaker contains a forum selection clause which provides in relevant part as follows:

> In any suit brought by [Liberty], which in any way relates to or arises out of this [Franchise] Agreement, or any of the dealings of the parties hereto, you consent to venue and personal jurisdiction in the state and federal court of the city or county of our National Office, presently Virginia Beach state courts and the United States District Court in Norfolk, Virginia. In any suit brought against [Liberty], . . . which in any way relates to or arises out of this [Franchise] Agreement, or any of the dealings of the parties hereto, venue shall be proper only in the federal court located nearest our National Office (presently the U.S. District in Norfolk, Virginia) . . . .
>
> *See,* Ex. 4, ¶ 15.b.

12. The Franchise Agreement signed by Whitaker also provides that "Virginia law governs all claims which in any way relate to or arise out of this [Franchise] Agreement or any of the dealings of the parties hereto." Ex. 4, ¶ 15.a.

13. I live and work in Virginia Beach, Virginia. Travel to Texas for a trial would be extremely inconvenient for me.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on this 18 day of May 2007.

June Montalbano
June Montalbano